

shall not relieve Licensee of any responsibility, obligation, or liability imposed by law or assumed under this Agreement. Special inspections shall be handled in accordance with Exhibit E.

b. From time to time, Licensor or its contractor may inspect poles to which Licensee is attached, and may place tags or other markings on such poles indicating the condition of the pole and/or whether the pole is safe to climb. LICENSEE SHALL INFORM ITS EMPLOYEES AND CONTRACTORS OF THE MEANING OF SUCH TAGS OR OTHER MARKINGS. Licensor's election to inspect any pole is not, and shall not be construed as, the assumption or undertaking of any duty, responsibility or liability on Licensor's part with respect to Licensee or its facilities that is not expressly set forth in this Agreement. The placement of an inspection tag or other marking, or lack thereof, on a pole shall not relieve Licensee of its responsibility to determine for itself whether any particular pole is safe for climbing.

12. Reservation of Poles by Licensor

a. Licensor reserves the right to identify, pursuant to a bona fide business plan, specific distribution poles for which Licensor projects a need for space in the provision of its core utility service. At the time of Licensee's pole attachment request, Licensor shall notify Licensee if any of the requested poles are reserved for Licensor's exclusive use. Licensee reserves its right to challenge Licensor's reservation of space consistent with applicable law.

b. Licensor shall allow Licensee to install Attachment(s) on such distribution poles until such time as Licensor notifies Licensee of its need for those poles. Licensee acknowledges that Licensor's need to use such distribution poles may arise on an emergency basis, for which Licensor's need is immediate.

c. Licensor will provide sixty (60) days prior electronic or other written notification of its need for the reserved poles unless such notice is impractical under the circumstances, in which case Licensor will notify Licensee as soon as reasonably practicable, and Licensee shall remove its Attachments from the reserved distribution poles within the time required by Licensor or within such other time as the parties agree. Alternatively, Licensor may remove the Attachments and Licensee shall reimburse Licensor's costs of doing so.

13. Compliance with Licensor's Policies and Procedures

Licensee shall comply with all Policies and Procedures applicable to Licensee's Attachments which are currently in force or subsequently established by Licensor at any time during the term of this Agreement, including (without limitation) Policies and Procedures to implement and allocate modification billing and to provide for an orderly process of attachment in the event that Licensee and one or more other parties desire to attach to the same distribution poles. Notwithstanding the above, any changes to the Policies and Procedures shall not be applied retroactively with regard to Licensee's existing attachments and shall not apply to the cost schedule without Licensee's consent. In the event of a conflict between the Policies and Procedures and the terms of this Agreement, the terms of this Agreement shall control. Licensor shall provide 60 days' notice to Licensee of any subsequent change to Licensor's Policies and Procedures.

14. Pre-Construction, Replacement and Modification Notification by Licensor

Licensor will endeavor to provide to Licensee such prior notification by electronic mail or other written notice of planned new construction of distribution poles to which Licensee is not attached as may be reasonable under the circumstances. However, the continuing practice of providing written notifications shall not constitute an obligation on the part of Licensor to provide such notifications. Licensor will provide sixty (60) days prior electronic mail or other written notification to Licensee (unless such notice is impractical under the circumstances, in which case Licensor will notify Licensee as soon as reasonably practicable) of planned replacement or modification (other than routine maintenance) of any distribution poles to which Licensee is attached, provided that Licensee has marked or otherwise placed identification on such Attachments which will allow Licensor to ascertain the identity of the owner of the Attachments. Notwithstanding the provisions of this Section 14, Licensor reserves the right to decide not to construct, reconstruct or modify any distribution poles. Licensee reserves the right to challenge any such decision consistent with applicable law. Should such decision be made after Licensee has paid amounts for additional capacity, such amounts shall be reimbursed to Licensee.

15. Transfers of Licensee's Attachments

a. Whenever Licensor has need to replace, during routine maintenance or modification in response to emergencies, any of its distribution poles to which an Attachment of Licensee is attached, Licensor shall have the right, but shall not in any way be obligated, to transfer the Attachments of Licensee from the replaced distribution pole to the replacement distribution pole. It is intended that transfers of Licensee's Attachments by Licensor will be limited to cables and service drops which are attached to distribution poles by tangent or dead-end type construction and for which the transfer can be accomplished without the requirement to cut or splice the cables or service drops. Down guys may also be transferred by Licensor, at its discretion.

b. Licensor shall not be required to provide advance notification to Licensee for the above-described transfer of Licensee's Attachment(s) by Licensor and such transfers may be performed by Licensor at its sole discretion.

c. Whenever Licensor needs to have Licensee remove its attachments from a distribution pole in a situation where a pole or entire pole line is being relocated or removed such that a transfer is not feasible, Licensor will so notify Licensee. Licensor will provide sixty (60) days' prior electronic or other written notification of its need for the poles under these circumstances unless such notice is impractical under the circumstances, in which case Licensor will notify Licensee as soon as reasonably practicable, and Licensee shall remove its Attachments from the distribution poles within the time required by Licensor or within such other time as the parties agree. When Licensor notifies Licensee that recovery of the distribution pole is for an emergency use, Licensee shall immediately remove its Attachments affected by Licensor's emergency. Alternatively, Licensor may remove the Attachments and Licensee shall reimburse Licensor's costs of doing so.

d. Licensee shall pay, on receipt of invoice, to Licensor the amount stated in Exhibit B for each pole on which such transfer or transfers of Attachments are made by Licensor during the initial year this Agreement is in effect. After the initial year of this Agreement, this fee may be

reviewed annually and may be adjusted upward or downward to more accurately reflect Licensor's actual cost of making such transfers, but any increases shall not exceed increases consistent with the Handy-Whitman Index, South Atlantic Region (FERC Account 364: Poles, Towers & Fixtures), unless otherwise agreed upon by the parties. Without limiting the foregoing provisions of this Section 15, Licensee shall, at any time, at its own expense, within thirty (30) days of the date of electronic or other written notice from Licensor, remove, relocate, replace or renew its Attachments placed on said poles, or transfer them to substituted distribution poles or perform any work in connection with said Attachments that may be required by Licensor. Should Licensee fail to do so and such failure causes Licensor to incur expense or liability, Licensee shall reimburse any such expense and shall indemnify and hold harmless the Indemnified Parties against any damages or liability arising out of such failure. In the event Licensee fails to so remove, relocate, replace, renew, or transfer its Attachments within thirty (30) days of the date of such notice, Licensor may at its option itself or by contract with others remove, relocate, replace, renew, or transfer such Attachments, although Licensor is not required to do so, and Licensee shall be liable for the per-pole transfer cost for such work.

e. In the event of a storm or other emergency in which Licensor is performing work on its facilities for such reasons as restoration of electric service to its customers or safety, Licensor shall have the right, but not the obligation, in connection with the repair of its own facilities, to repair any Attachments of Licensee, and Licensee shall reimburse Licensor for the cost incurred by Licensor in making such repairs to Licensee's Attachments.

16. NJUNS

The parties recognize that improved coordination of activities such as pole attachments and pole attachment transfers by pole owners and pole attachers is to the benefit of all parties, and that Licensee's and Licensor's participation in the National Joint Utilities Notification System ("NJUNS"), a Web-based system developed for the purpose of improving the coordination of such joint activities, would improve their respective operations under this Agreement. Licensee will join NJUNS within 30 days of the execution of this Agreement and, during the term of this Agreement, will actively participate by entering field information into the NJUNS system within the times required by the system. Should Licensee fail to actively participate in NJUNS and should such failure cause Licensor to incur expense or liability to others, Licensee shall reimburse Licensor its expense and indemnify and hold harmless the Indemnified Parties from any damages or liability arising out of such failure.

17. Non-Reimbursed Reconstruction

In the event any third party entity necessitates the reconstruction of an existing pole or pole line where there is no reimbursement of cost from such third party to Licensor, Licensor shall pay the cost of replacing a like number of poles of like kind. In the event additional poles are required to complete the new pole line, Licensor will treat each such additional pole as new construction, and any requirements for pole height beyond what is required to meet Licensor's needs shall be billed to Licensee.

18. Interruption of Licensee's Service

Licensor reserves the right to maintain its distribution poles and to operate its facilities in such manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruptions to Licensee's service or for interference, however caused, with Licensee's operation of its cables, wires and equipment, or for damage to Licensee's facilities, arising out of the use of Licensor's distribution poles, except that Licensor shall be liable for damage caused solely by its wanton or willful wrongful act. Licensor also shall not be liable for any such interruption, interference or damage caused by its contractors or by any joint user or other attacker.

19. Licensee's Right-of-Way Obligations

Licensee shall, before installing any Attachment to Licensor's distribution poles or placing any anchors in connection therewith, secure any required permission or consent from federal, state, county, or municipal authorities, or from owners of property upon which the distribution poles may be located, to install and maintain Licensee's Attachments thereon. Licensee shall not infer any such permission or consent from Licensor from this Agreement.

20. Annual Attachment Fees

a. Licensee shall pay annual attachment fees to Licensor for each Attachment to distribution poles under this Agreement. Licensor shall send annual statements to Licensee notifying Licensee of the amounts it owes for Attachments for such Contract Year, and Licensee shall pay the corresponding amount. The amount of the annual attachment fee to be invoiced by Licensor shall be calculated in accordance with the formulas set forth in Exhibit A, attached hereto and made a part hereof.

b. The formulas set forth in Exhibit A are based on the FCC formulas for cable television and telecommunications attachments. There may be circumstances under which Licensor is entitled to a fee other than or in addition to the FCC rate. Licensor reserves its rights to charge and collect a per-Attachment fee that is higher than the FCC rate should Licensor determine that these circumstances are present on or after Licensor gives notice of its intent to charge such higher fee under paragraph (c) below. No action or inaction of Licensor shall constitute a waiver of Licensor's right to assert that it is lawfully entitled to collect such a higher fee and Licensor expressly reserves such right. No action or inaction on the part of Licensee shall constitute a waiver of the Licensee's right to dispute the existence of any alleged circumstances or the right to challenge the amount of any fee other than the FCC rate and Licensee expressly reserves such rights.

c. Licensor may revise the per-Attachment fees set forth in Exhibit A at any time without the necessity of an amendment to this Agreement; provided, however, that Licensor shall give Licensee at least sixty (60) days' written notice of any increase in the per-Attachment fee, whether such increase is consistent or inconsistent with the rate calculation in Exhibit A or pursuant to the circumstances described in paragraph (b) above. Neither party waives any of its legal rights, remedies, arguments or positions arising under the Act or otherwise with respect to any rate change or increase.

21. Periodic Field Counts

a. The number of Attachments to Licensor's distribution poles for which Licensee will pay attachment fees to Licensor will be determined by actual field count or alternative methods as set forth in this section. Any Service Drop that is within twelve inches (12") of Licensee's other Attachments on a pole (consistent with applicable Codes and Laws) shall be counted as one Attachment for billing purposes. Licensor reserves the right to perform the field count with its employees or to contract the performance of the field count to an outside party. Licensee will be provided reasonable notice (not less than thirty (30) days, unless otherwise agreed upon) and given the opportunity to accompany Licensor or its contractor and to participate in the field count. Both the Licensee and the Licensor have a responsibility and an opportunity to participate in the field counts so that accuracy may be determined at the time of the field count. If the Licensee elects not to have its personnel participate in the actual field count, it shall so notify Licensor in writing, and it shall, prior to the scheduled beginning date of the field count, provide a written statement of its intent to accept the field count results as determined by the Licensor. Whether or not Licensee gives such written notice to Licensor, Licensee shall, on receipt of invoice, reimburse Licensor its cost, including without limitation applicable taxes and overhead to perform the field count, and Licensee shall in any event abide by the field count results as determined by Licensor.

b. Licensee shall indicate agreement with the field count results by having its representative at the field count sign the counter's summary sheet of all pole count documentation immediately following completion of the field count. At the time an invoice is submitted to Licensee for the field count, the summary sheets, and summary maps, if used, shall be provided in support of the count to enable Licensee to verify the accuracy of the count.

c. Should Licensor in the future adopt a process pursuant to which one or more third parties' attachments are counted in the same field count as Licensee's Attachments, the cost of the count will be allocated pro rata among Licensee and the third parties whose attachments are counted.

d. Licensor may at any time competitively bid a field count or utilize for the field count any contractor that it has used for such work in a prior field count. Should Licensor decide in its sole discretion to use a previously-hired contractor, and if that contractor's rates per pole quoted for the current field count have increased from the contractor's previous rates by a percentage greater than the percentage of cost increase identified in the Handy Whitman Index, South Atlantic Region (FERC Account 364: Poles, Towers & Fixtures), then Licensor shall have the option of either utilizing that contractor and absorbing that amount of the contractor's charges that exceed the Handy Whitman Index percentage increase or selecting a contractor by competitive bid. Should Licensor elect to use the competitive bid process, it shall provide Licensee the opportunity to submit the names of potential contractors for consideration in the bidding process.

e. A field count of Licensee's Attachments will be performed at various times (normally on a four-year interval). If Licensor elects to conduct periodic field counts more frequently than on a four-year cycle, it shall bear the cost of such additional field counts. However, if any such count is for the purpose of settling a dispute or in connection with an assignment issue, Licensee shall pay for the cost of such count. The year of the first field count to be performed under this provision will be determined by Licensor but will occur during the first four (4) years

after the effective date of this Agreement. For Contract Years for which no actual field count is performed, the number of Attachments will be determined by Licensor based on previous counts or existing records, including applications and maps furnished by Licensee. Upon the performance of an actual field count, adjustments will be made, if appropriate, to the attachment fee amounts for those Contract Years for which an actual field count was not performed. The undocumented attachments reflected in the actual field count shall be deemed unauthorized attachments, and such adjustments will be made in accordance with Section 23.

f. As an alternative to performance of the actual field count described herein, the parties may use existing maps, geographic information systems ("GIS"), and/or Attachment records; provided, however, that such maps, GIS, or records exist and provided that each party agrees that results with reasonable accuracy can be achieved. The results of attachment counts performed in this alternative manner shall be treated, for Annual Fee purposes, as if they were determined by actual count.

22. Fee Payments

a. Attachment fees are payable in advance at the beginning of each Contract Year, upon receipt of an invoice. The annual fees to be billed on each such invoice shall be determined by multiplying the appropriate annual fee per-Attachment for that Contract Year as described in Section 20 above by the number of Attachments as determined by actual field count or by procedures described in Section 21 above.

b. For Attachments made during a Contract Year, Licensee shall pay the full per Attachment annual fee for that year, which amount shall be included on Licensee's annual attachment fee invoice for the following Contract Year.

c. Payment of all invoice amounts (including annual attachment fees, transfer fees and any other amounts due under the Agreement) shall be due upon receipt of the invoice and those not paid within forty-five (45) days after receipt shall be subject to interest from its due date to date of payment at a rate equal to the highest prime rate quoted in the Money Rates Section of the Wall Street Journal on the 45th day from the date of the invoice, plus five percentage points (5%), or the maximum rate of interest allowed by law, whichever is less (the "Interest Rate"), for each month or portion thereof that the payment is late. If for any reason attachments for which fees are paid in advance hereunder cease to exist or cease to be the property of Licensee, no portion of said fee shall be refundable. No portion of any fee shall be prorated. Failure to pay fees, expenses or any other charges under this Agreement within forty-five (45) days after presentation of the invoice or on the specified payment date, whichever is later, shall constitute a default of this Agreement.

23. Unauthorized Attachments

a. Except for those attachments for which this Agreement expressly states Licensor's grant of access is not required, the attachment of any cable, wire, appliance, equipment or facility to any pole, equipment, or facility owned or controlled by Licensor, or the use of such attachment for the provision of services/capabilities, which is not authorized by the terms of this Agreement, shall be deemed an unauthorized attachment and shall constitute a default of this Agreement. Licensee acknowledges that Licensor may not reasonably ascertain the date or the year in which